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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MGallagher

MEMORANDUM FOR NATIONAL DIRECTOR, COLLECTION FIELD OPERATIONS

FROM: Dennis M. Ferrara *Dennis M. Ferrara*
Acting Assistant Chief Counsel (General Legal Services)

SUBJECT: Review of Collection Quality Measurement Systems

This memorandum sets forth our comments to the Document Clearance Record on the Collection Quality Measurement System ("CQMS"). Our review addressed the legal sufficiency of the CQMS document with an emphasis on the document's compliance with Policy Statement P-1-20, Section 1204 of the IRS Restructuring and Reform Act of 1998 ("Section 1204 of the RRA")¹, and IRM Chapter 105.4, *Managing Statistics Handbook*, August 1998 ("IRM Chapter 105.4"). Our comments are set forth below.

In General: We previously reviewed many of the CQMS measurements contained in the draft document and concluded in our July 22, 1998 memorandum to the National Director, Collection Field Operations that those measurements complied with Policy Statement P-1-20 and Section 6231 of the Technical and Miscellaneous Revenue Act of 1988. A copy of that memorandum is enclosed for your ready reference. As Section 1204 of the RRA was enacted into law subsequent to that memorandum, we have reviewed those measurements again and conclude that they comply with Section 1204 of the RRA.

As a quick refresher of our earlier opinion, we reviewed CQMS measures which examined individual case handling for compliance with timeliness and record keeping standards set forth in the Internal Revenue Manual and other references. We concluded then, and reaffirm today, that such quality measurements are not records of tax enforcement results as that term is used in Policy Statement P-1-20

¹Among other things, Section 1204 prohibits the IRS from using records of tax enforcement results to evaluate employees or to impose or suggest production quotas or goals with respect to such employees.

or Section 1204 of the RRA.² As stated in IRM Chapter 105.4 at page 1-5, paragraph 1.7, a record of tax enforcement results is "a figure resulting from the recordation, accumulation, tabulation, or mathematical analysis that is directly related to producing a tax enforcement result." The term "tax enforcement result" is defined in IRM Chapter 105.4 at page 1-5, paragraph 1.6 as "an outcome produced by an employee exercising judgement with regard to determining tax liability or ability to pay."

The timeliness and record keeping measurements within CQMS do not fit the definition of either a record of tax enforcement results or a tax enforcement result since the CQMS measurements do not result from the exercise of judgement *with regard* to determining tax liability or ability to pay. Accordingly, those CQMS measurements are unaffected by the prohibitions of either Policy Statement P-1-20 or Section 1204 of the RRA.

Our review of the CQMS document reveals, however, that the CQMS currently under review contains supplemental standards not seen by us previously. In particular, we note that paragraphs 2.4.4. and 3.5.4., contain a standard which measures whether the action taken in the case demonstrated good judgement. Our review of this new measurement is set forth separately below.

CQMS Measurement of Whether Good Judgement Was Used in Taking an Enforcement Action.

The CQMS document contains new standards regarding a review of closed cases to determine whether the action taken in the case demonstrated good judgement. As explained below, the CQMS standard is not inconsistent with Policy Statement P-1-20 or Section 1204 of the RRA.

Our reading of paragraphs 2.4.4. and 3.5.4. and their accompanying explanatory paragraphs reveals that the review of the judgment used in taking the action is limited to an assessment of the facts and circumstances of the individual case³

²Section 1204 repealed Section 6231 of TBOR effective July 22, 1998 and, accordingly, this memorandum does not address CQMS' compliance with Section 6231.

³In our view, a review of an employee's actions and judgement undertaken in the handling of a particular case is not a "record of tax enforcement results" as that term is understood for purposes of both Policy Statement P-1-20 and Section 1204 of the RRA. To this end, we note that Policy Statement P-1200, the precursor to Policy Statement P-1-20 stated, in part, that "...If the duties of the position require the exercise of judgment based on detailed knowledge of laws and regulations or involve material

only. The review does not consider any records of tax enforcement results in assessing the judgment used in taking the action (e.g. a determination of good judgement does not consider statistics such as the number of liens, levies, or seizures undertaken by any individual or organizational group of employees). Accordingly, as no records of tax enforcement results are used in determining whether the action taken in the case demonstrated good judgement, these new CQMS measurements are not inconsistent with Policy Statement P-1-20 or Section 1204 of the RRA.

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DP

On December 21, 1998, Mike Gallagher of our office shared these comments with Brenda Beasley of your staff. Should you have any questions, please contact Mike at 401-4035.

factors or technical or professional judgment, performance must be evaluated *in light of the actual cases or other assignment handled, and no quantitative measurement may be utilized which does not take such differences into account...*" (Emphasis added). Thus, we conclude that neither Policy Statement P-1-20 nor Section 1204 of the RRA preclude the IRS from evaluating an employee engaged in exercising judgement in regard to determining tax liability or ability to pay when that evaluation is based upon the facts and circumstances of an individual case.